

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 157/AIL/Lab./J/2011, dated 23rd August 2011)

NOTIFICATION

Whereas, the Award in I.D.No.28/2004, dated 22-2-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. E.T.A. Engineering Private Limited, Puducherry and its 5 workmen namely (1) P. Devanathan, (2) S. Balaganapathy, (3) T. Jawahar, (4) R. Ramu and (5) M. Rubaidheen over their transfer and non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Tuesday, the 22nd day of February 2011

I.D. No. 28/2004

R. Ramu
(Authorised by four others) . . . Petitioner

Versus

The General Manager,
E.T.A. Engineering Private Limited,
Pondicherry . . . Respondent

This petition coming before me for final hearing on 3-2-2011 in the presence of Thiru S. Nagarajan, advocate for the petitioner, Thiru K. Parthiban, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No.87/2004/Lab./AIL/J, dated 22-6-2004 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the transfer order issued by the management of M/s. E.T.A. Engineering Private Limited to five workers namely (1) P. Devanathan, (2) S. Balaganapathy, (3) T. Jawahar, (4) R. Ramu and (5) M. Rubaidheen is justified or not?

(2) Whether the non-employment of five workers namely (1) P. Devanathan, (2) S. Balaganapathy, (3) T. Jawahar, (4) R. Ramu and (5) M. Rubaidheen by M/s. E.T.A. Engineering Private Limited is justified or not?

(3) To what relief/remedies, they are entitled to?

4. To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. In the claim statement, the petitioners have stated as follows:-

The petitioners were the regular employees of the respondent company. They were issued the transfer orders by the respondent company, directing them to report duty at Ambattur, Chennai on 11-11-2002. The respondent company failed to observe the legal, regular formalities of transfer procedures especially promotion, increase of pay, allowances subject to the living index status of the place of the work etc.

The petitioner Ramu who was a Fitter in the respondent company, duly honoured the order of transfer by the respondent and reported duty at the transferred place of work, where he found that the nature of work was entirely different. Further there was no accommodation provided to him, which clearly shows the deliberate intention of the respondent company to victimise the petitioners. Since the respondent company had already designed a plot of victimisation against the petitioners nevertheless cared to their voice by the respondent at any point of time. However, the respondent company tried its best to non-employ the petitioners to the reason of non-comply of the order of transfer and finally terminated them from employment with the above rhyme and without any written order. It is against the law of labour legislation of welfare state. Hence, this industrial dispute is filed to reinstate them with back wages and other benefits.

3. In the counter, the respondent has stated as follows:-

The petitioners are only trainees and as such they have no right at all to claim the petition alleged remedies. Even in the case of permanent workers, the respondent has every right of transfer its employee where their service is required and also for administrative reason. In the

present case, the petitioners are only trainees and hence they could not come under the purview of workman to seek any remedies under the Industrial Disputes Act. Since the order of transfer is the prerogative right of the management, the petitioners have no right to question the same.

Though the petitioners are only trainees, the respondent management in order to give continuous opportunities to the petitioners, on humanitarian grounds transferred them to Ambattur, Chennai, providing D.A. and T.A. instead of terminating them from their traineeship. In fact, since at that time there was no required work to accommodate the petitioners in the factory at Pondicherry, they were transferred to Ambattur factory, wherein at that time, they could be accommodated on humanitarian ground. But the petitioners wantonly failed to join duty at the transferred place, which resulted not only dislocation of work arrangement of the respondent's factory at Ambattur, but also caused heavy monetary loss and great administrative hardship to the respondent. Eventhough the respondent had given several opportunities to the petitioner by way of several letters, asking them to join duty at Ambattur, except Ramu, other petitioners failed to do so. Even the said Ramu, who reported duty at the transferred place, left abruptly the work place on the very same day without any permission. Since the petitioners had left from their service of traineeship on their own volition, their service become automatically ceased to be terminated and hence the question of victimisation as alleged in the petition will not arise at all.

4. On the side of the petitioners, Ramu was examined as PW.1 and Ex.P1 to Ex.P13 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R30 were marked.

5. Now the point for determination is:

"Whether the petitioner is entitled for the relief sought for?"

On point:

6. The contention of the petitioners is that they were regular employees in the respondent company and they were the members in E.T.A. Thozhilalargal Sangam from 2001 and the said union has been formed as against the untolerable atrocities of the respondent company towards the employees. They further submitted that they were issued transfer order by the respondent company on 11-11-2002, directing them to report at Ambattur, Chennai and Ramu, who was examined as

PW.1 obeyed the order of the respondent company and reported duty at Ambattur unit, where he found, no accommodation provided to the employees. The petitioners further submitted that since the order of transfer is purely *mala fide*, the other petitioners have not reported duty at Ambattur unit.

7. In order to prove their case, the petitioners have marked the transfer order of Balaganapathy as Ex.P1 and the extension of time to report for duty at Ambattur Branch as Ex.P2. Ex.P3 to Ex.P8 are the requisition filed by the petitioners to consider the transfer orders issued to them. Ex.P9 is the letter sent by the petitioners, dated 25-7-2003 objecting to recruit new employees by the respondent management. Ex.P10 is the list of staff allocated in the shift. Ex.P11 is the copy of the standing order of the respondent company. Ex.P12 is the agreement entered into between the employees union and the respondent management. Ex.P13 is the copy of the plaint filed before the Additional Sub-Judge, Pondicherry.

8. On the side of the respondent, it is submitted that the petitioners were the trainees in the respondent company and the order issued to the petitioners to take them as trainees itself would show that there is a condition fixed as to transfer of the trainees. The respondent would further submit that though the petitioners were only the trainees, the respondent management in order to give continuous opportunities to them, on humanitarian ground transferred them to Ambattur, providing D.A. and T.A. instead of terminating them from their traineeship, since at that time, there was no required work to accommodate the petitioners in the factory at Pondicherry.

9. In order to prove his claim, the respondent has marked the appointment orders of the petitioners as Ex.R1 to Ex.R5. A perusal of Ex.R1 to Ex.R5 reveals that all the petitioners were issued with the appointment orders, designating them as 'Technician Trainee'. Though the petitioners have stated that they were the regular workers, they have not produced any documentary evidence to prove their claim. Hence, this court comes to the conclusion that the petitioners were trainees at the time of terminating their service.

10. The main contention of the petitioners is that they were transferred to Ambattur unit of the respondent company and since they have not joined duty, except the petitioner Ramu, they have been terminated from the service of the respondent company.

11. *Per contra*, the contention of the respondent is that since the respondent company had been facing with tough time in running the factory continuously due to lack of orders, diminishing marketing and critical financial position, the respondent company in order to

give continuous employment on humanitarian grounds to the petitioners and other ten employees, transferred them to Ambattur, Chennai by providing T.A., D.A. and C.C.A. and other allowances.

12. In this regard, it is pertinent to refer the appointment orders Ex.R1 to Ex.R5 issued to the petitioners, wherein it is stated as follows:-

“3. Your performance will be reviewed periodically once in every three months to assess your performance, aptitude to work, intelligence, etc. In case you fail to acquire skills and efficiency in the work as per the requirement of the management during the training period, the management has the right to extend or discontinue your training period, without assigning any reason giving a notice period of one month. The management does not have obligation to take you into regular services in the company after successful completion of the training period. However, the management may consider to absorb you in the regular services on probation whenever vacancies arise in the plant at the sole discretion of the management.

4. During the period of training, you have to attend to the duties assigned to you from time to time by your superiors.

5. . .

6. . .

7. . .

8. The management has the right to transfer you from one department to another or one place to another within the company or outside.”

Accepting the terms and conditions of the appointment orders under Ex.R1 to Ex.R5, the petitioners have joined duty. When the respondent has issued the transfer order, transferring the petitioners to Ambattur unit with D.A. and T.A. it is the duty of the petitioners to obey the order of the respondent management. But except the petitioner Ramu, other petitioners have not obliged the order of the respondent management. Even the said Ramu, who reported duty at transferred place, left abruptly the work place on the very same day without any permission, as stated by the respondent. Though the said Ramu, who was examined as PW.1, has stated that there is no accommodation provided to the employees at the transferred place *i.e.* Ambattur, Chennai, it is not a valid reason to substantiate his claim.

13. The learned counsel for the respondent would further argue that since the petitioners have not reported for duty as per the transfer order issued to

them, the respondent sent reminder letters on 11-12-2002 to them by R12 asking them to join for duty at Ambattur, Chennai, but they wantonly refused to report for duty.

14. In order to prove the said contention, the respondent has marked the reminder letter, dated 11-12-2002 sent to the petitioner Balaganapathy, Devanathan, Rubaidheen and T. Jawahar as Ex.R12, Ex.R16, Ex.R21 and Ex.R27 respectively. A perusal of these documents reveals that the petitioners were given opportunity to report for duty at Ambattur on or before 16th December 2002. The said fact was also admitted by PW.1 Ramu during his cross-examination. The relevant portion is as follows:-

“25-11-2002-க்குள் சென்னை கம்பெனிக்கு சேர வேண்டும் என்று உத்தரவில் கூறப்பட்டு இருந்தது. அதன்படி சேரவில்லை. அதனால் மீண்டும் நிர்வாகம் எங்களுக்கு பல கடிதம் தந்தும் பணியில் சேர சொன்னாது என்றால் சரிதான்.”

PW.1 himself has admitted that in spite of repeated reminders sent by the respondent company, they have not joined duty at Ambattur Unit. At this juncture, it is to be stated that the transfer of employees from place to another place is purely on the discretion of the respondent management and no one can interfere with the said discretion, unless otherwise the said transfer is illegal and as against the standing orders. In this case as per clause 8 of the Traineeship appointment letters under Ex.R1 to Ex.R5, “the respondent has every right to transfer the petitioners from one department to another or one place to another within the company or outside”. Accordingly, the petitioners have been transferred to Ambattur unit due to exigency of service. According to the respondent, eventhough the petitioners and other ten employees received the said transfer letters, only Ramu, one of the petitioners herein and ten others only joined duty at transferred place as per the transfer order and even the said Ramu, who reported duty at transferred place, left abruptly the work place on the very same day without any permission and the other ten employees, who have joined duty at the transferred place, have been given continuous employment thereon and now they are working in the respondent's factory situated at Dubai. The said version has not been denied by the petitioner. Hence, the contention of the petitioners that there is no accommodation provided to the employees at Ambattur unit and in order to victimise them, they have been transferred to Ambattur unit, cannot be accepted.

15. Lastly the learned counsel for the petitioner has argued that the petitioners have been terminated without holding any enquiry, which is against the labour law.

16. On the side of the respondent, it is contended that since the petitioners have not reported for duty and they have remained absent authorisedly for many days, there is no need to conduct the enquiry and in order to support his claim, he relied upon the following decision:-

2000 L.L.R. 689:

"Termination of service for unauthorised absence - Holding of enquiry - Necessity of - Employee asked to report for duty by a notice by registered post- Notice returned as refused - Employee absented and did not report for duties for 30 days *vide* clause 16 of *Bi partite* settlement - Nor did he send his explanation - Holding of enquiry not necessary - Industrial Tribunal should not have given relief of reinstatement - Even High Court has led to miscarriage of justice so far bank is concerned - Award of reinstatement set aside."

17. In this case, since the petitioners have not reported for duty at Ambattur, Chennai even after receipt of transfer orders, the respondent sent many reminders as stated and in spite of that they have not reported for duty. At this juncture, the respondent has no other go than to terminate them from service, in which case, there is no need to conduct the domestic enquiry, as held by the Hon'ble Supreme Court in the above case. Therefore, this court feels that there is no *mala fide* or victimisation and unfair labour practice on the part of the respondent and consequently, the petitioners are not entitled for reinstatement with back wages and other benefits since they were only working as trainees.

18. The learned counsel for the respondent would submit that now the respondent company has been closed and hence I feel that still be appropriate to pay some amount to the petitioners towards monetary compensation only will meet the ends of justice.

19. Admittedly, the petitioners are the trainees and they have served in the respondent company for six months only. Considering the facts and circumstances of the case, the respondent company is hereby directed to pay a sum of ₹ 15,000 each to the petitioners as monetary compensation. Accordingly, this point is answered.

20. In the result, the industrial dispute is partly allowed. The petitioners namely (1) R. Ramu, (2) S. Balaganapathy, (3) Devanathan, (4) Rubaidheen and (5) Jawahar are not entitled for reinstatement with back wages and other benefits.

However, the respondent is hereby directed to pay a sum of ₹ 15,000 each to the petitioners as monetary compensation. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 22nd day of February 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry.

List of witnesses examined for the petitioner :

P.W.1 -13-9-2007-R. Ramu

List of witnesses examined for the respondent :

RW.1 -15-7-2010 - Loganathan

List of exhibits marked for the petitioner :

Ex.P1	— 11-11-2002	Copy of transfer order issued to Balaganapathy.
Ex.P2	— 11-12-2002	Letter sent by the respondent to Balaganapathy.
Ex.P3	— 16-12-2002	Letter given by the petitioner Ramu.
Ex.P4	— 16-12-2002	Letter given by the petitioner Jawahar.
Ex.P5	— 16-12-2003	Letter given by the petitioner Balaganapathy.
Ex.P6	— 16-12-2002	Letter given by the petitioner Devanathan.
Ex.P7	— 11-4-2003	Letter submitted by the petitioner to the Conciliation Officer.
Ex.P8	— —	Explanation given by the respondent management to the Conciliation Officer.
Ex.P9	— 25-7-2003	Copy of the letter sent by the petitioners to the Conciliation Officer.
Ex.P10	— —	List of staff allocated in the shift.
Ex.P11	— —	Copy of the standing orders
Ex.P12	— —	Agreement entered into between the petitioners union and the respondent.
Ex.P13	— —	Copy of the plaint in O.S. No. 362/2001.

List of exhibits marked for the respondent :

Ex.R1 — 22-3-2002 Appointment order issued to Ramu.

Ex.R2 — 22-3-2002	Appointment order issued to Balaganapathy.
Ex.R3 — 22-3-2002	Appointment order issued to Devanathan.
Ex.R4 — 22-3-2002	Appointment order issued to Rubaidheen.
Ex.R5 — 22-3-2002	Appointment order issued to Jawahar.
Ex.R6 — 6-5-2010	Copy of board resolution
Ex.R7 — 21-6-2010	Power of attorney deed
Ex.R8 — 11-11-2002	Transfer letter issued to Ramu
Ex.R9 — 21-12-2002	Letter, dated 21-12-2002 to Ramu.
Ex.R10 — 23-12-2002	Postal receipt
Ex.R11 — 11-11-2002	Transfer letter issued to Balaganapathy.
Ex.R12 — 11-12-2002	Reminder letter issued to Balaganapathy.
Ex.R13 — 21-12-2002	Letter, dated 21-12-2002 issued to Balaganapathy.
Ex.R14 — 23-12-2002	Postal receipt
Ex.R15 — 11-11-2002	Transfer letter to Devanathan
Ex.R16 — 11-12-2002	Reminder letter to Devanathan
Ex.R17 — 11-12-2002	Postal receipt
Ex.R18 — 21-12-2002	Letter issued to Devanathan
Ex.R19 — 23-12-2002	Postal receipt
Ex.R20 — 11-11-2002	Transfer letter to Rubaidheen
Ex.R21 — 11-12-2002	Reminder letter to Rubaidheen
Ex.R22 — 11-12-2002	Postal receipt
Ex.R23 — 21-12-2002	Letter issued to Rubaidheen
Ex.R24 — 23-12-2002	Postal receipt
Ex.R25 — 25-12-2002	Returned RPAD cover
Ex.R26 — 11-11-2002	Transfer letter to Jawahar
Ex.R27 — 11-12-2002	Reminder letter issued to Jawahar
Ex.R28 — 11-12-2002	Postal receipt
Ex.R29 — 22-12-2002	Returned RPAD cover
Ex.R30 — 21-12-2002	Letter to Jawahar

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 158/AIL/Lab./J/2011, dated 23rd August 2011)
NOTIFICATION

Whereas, the Award in I.D.No. 11/2006, dated 28-4-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Mohan Breweries and Distilleries Limited, (Glass Division), Puducherry and its workmen Thiruvalargal (1) B. Babu, (2) R. Radja and (3) D. Tamizharasan over transfer and other demands has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present: Thiru T. MOHANDASS. M.A, M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 28th day of April 2011

I.D. No. 11/2006

(1) D. Tamizharasan (2) Radja (3) Babu	Petitioners
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Versus

The General Manager (Works), Mohan Breweries and Distilleries Limited, (Glass Division), Pondicherry.. .	Respondent
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This petition coming before me for final hearing on 27-4-2011 in the presence of Thiru S. Nagarajan, advocate for the petitioner, Thiruvalargal R. Ilancheliyan and R. Thilagavathi, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 38/AIL/Lab./J/2006, dated 20-3-2006 of

the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the transfer of Thiruvalargal B. Babu, R. Radja and D. Tamizharasan by the management of M/s. Mohan Breweries and Distilleries Limited, (Glass Division) from Pondicherry to Chennai factory is justified? If not, to give appropriate directions.

(2) Whether the transfer was done in *mala fide* exercise of power?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement would aver that the first and second petitioners were working as "Sorter" and the third petitioner was working as "Packing Machine Operator" in the respondent company. The employees of the respondent company started a union under the name and style of "Mohan Breweries and Distilleries Limited Desia Employees Union" and the said union had its strength of 156 members. Some other workers started another union called "Mohan Breweries and Distilleries Limited Employees Union" and the said union got 30 members.

The respondent management has not paid the agreed wage increase of ₹ 1,400 to the employees which was agreed and covered in pursuance of 12(3) settlement effected from 2000. Hence, the smaller union went on strike and on the midnight of 27-7-2004 and the management abruptly closed the factory without bothering that 75% of the workers were not in support of the strike. The management insisted upon dismantling of the union as the condition precedent to reopen the factory and the closure was made as a threat to the workers and to make them dismantle the union and accordingly, the members of the union also dismantled both the unions as with no other go.

The petitioner took an active role in the forming of the new union due to sheer negligent attitude of the respondent management over the affairs of the labour. In the said union, the first and third petitioners were Joint Secretary and Treasurer respectively and the second petitioner was the President.

On coming to know of forming new union, there was an attempt by the general management of the respondent company to serve the transfer order of the petitioner. The transfer order reads that the petitioners were transferred to Brewery Unit, Mohan Breweries and Distilleries Limited, Valasaravakkam, Chennai and also that they have to report immediately. The said unit is liquor manufacturing unit and it has nothing to do with the glass manufacturing unit, since the petitioners were Sorters and Packing Machine Operators. So it is apparent that the petitioners were punished with *mala fide* intention by the respondent.

Since the transfer order was out of reason and basis except to victimise them, they had taken steps against its enforce before the Labour Officer (Conciliation). However, the prevaricate attitude of the management before the officer resulted with non-employment of the petitioners let to find an amicable solution to its end and harmony of the factory. Nor the respondent management have preferred any disciplinary proceedings against the petitioners so far except to punish and let the petitioners to non-employment. Hence, this industrial dispute is filed.

3. The respondent filed a counter statement and contended that in the year 1982, the respondent company put up a unit in Valasaravakkam, Chennai for manufacture of Indian made foreign liquor and later on, it also put up a brewery plant. The erstwhile distillery plant of Vorion Chemicals and Distilleries Limited become a captive distillery consequent to the merger with Mohan Breweries and Distilleries Limited in 1994. It had another liquor unit at Chitoor. It had also installed 12 MW Biomass Power Plant at Payalaseevaram. As the liquor and brewery units require glass bottles for filling, it put up a glass division at Pondicherry. Transfer of workmen from one unit to another is a regular phenomenon and while effecting such transfer, the emoluments of the concerned employees are protected.

On 22-7-2000 a settlement under section 12(3) of Industrial Disputes Act, 1947 before the Government Labour Authorities was made in which, it was specifically provided that "the workers are liable to be transferred from one operation to another or from one section/department to another or from one machine to another or from one unit to another of the same management." This provison was reiterated in the subsequent settlement, dated 6-11-2004 entered under section 12(3) of Industrial Disputes Act, 1947 before Labour Commissioner, Pondicherry reading as "Workmen are liable to be transferred from one operation to another or from one section/department to another or from one machine to another or from one unit to another place wherever it is located under the same management". Hence, the transfer of workmen is made to meet exigency of work.

In December 2005, as the Valasaravakkam unit at Chennai required the services of two workmen for inspection of the bottles and one fitter for maintenance and operations, these three petitioners were transferred from Pondicherry unit to Valasaravakkam unit at Chennai and they were directed to report for duty at Valasaravakkam on 6-12-2005. The petitioners refused to go on transfer to the Valasaravakkam unit. The petitioners were prevaricating by carrying on correspondence in the course of which by the respondent's letter, dated 28-1-2006 they were informed

that as a special case, they will not only be paid a transfer allowance of ₹ 500 while working at Valasaravakkam, but also they will be granted leave for a day twice in a month either prefixing or suffixing the weekly holiday to enable them to visit their families at Pondicherry. In spite of such generous gesture, the petitioners refused to obey the order of transfer.

Apart from the above, out of these three petitioners, one Babu is doing some gainful business and it reliably understood that another petitioner D. Tamizharasan left abroad for some gainful employment and returned back and the third workmen R. Radja is not in India and is stated that he is in gainful employment in foreign country. Once the petitioners were in gainful employment, they ceases the employee and employer relationship with the respondent company and they do not have any legal right to continue the dispute with the respondent. Hence, the respondent prays for dismissal of the present industrial dispute.

4. On the side of the petitioner, PW 1 was examined and marked Ex.P1 to Ex.P17. On the side of the respondent, no oral evidence was adduced, but Ex.R1 to Ex.R26 were marked.

5. Now the point for determination is:

"Whether the petitioners are entitled for the relief sought for?"

On this point:

6. The contention of the petitioners is that they were the employees under the respondent company and since they actively took part in forming a new union due to sheer negligent attitude of the respondent management over the affairs of the labour, they were transferred from Pondicherry unit to Valasaravakkam unit and the respondent management had exercised its authority in a *mala fide* manner to transfer them with the ultimate to victimise them.

7. On the side of the petitioners, Ex.P1 to Ex.P17 were marked. Ex.P1 is the copy of the application form for registration of the trade union. Ex.P2 is the copy of the receipt for the charges paid for forming a new union. Ex.P3 is the copy of the shift schedule of quality department of the respondent company. Ex.P4 to Ex.P6 are the copy of the transfer orders issued to the petitioners. The said transfer orders have been marked as Ex.R1, Ex.R8 and Ex.R15. A perusal of these documents reveals that the petitioners have been transferred from Pondicherry unit to Valasaravakkam unit and they have to report for duty before the Sivasubramanian, Works Manager on 6-12-2005.

8. On the side of the respondent, it is contended that the transfer of workmen from one unit to another is a regular phenomenon and as per the settlements under section 12(3) of Industrial Disputes Act which have been entered on 22-7-2000 and 6-11-2004, the workers are liable to be transferred from one operation to another

or from one section/department to another or from one machine to another or from one unit to another of the same management. In order to prove the said contention, the respondent has marked the settlement entered into between the employees and the respondent company during the year 2000 and 2004 as Ex.R24 and Ex.R25 respectively. A perusal of Ex.R25 reveals that as per clause 4.29 of the 12(3) settlement, the workmen are liable to be transferred from place to another place. The relevant portion is extracted hereunder.

"Workmen are liable to be transferred from one operation to another or from one section/department to another or from one machine to another or from one unit to another place wherever it is located under the same management."

All the workmen of the respondent company agreed with the said settlement. Hence, as per the above settlement, the respondent has every right to transfer their employees from one unit to another unit and accordingly, the petitioners have been transferred to Valasaravakkam Unit. Further transfer of employee is a discretionary policy of the management and no one can interfere with the said policy decision. In this case, the respondent has stated that in December 2005, as the Valasaravakkam unit at Chennai required the services of two workmen for inspection of the bottles and one fitter for maintenance and operations, these three petitioners were transferred from Pondicherry unit to Valasaravakkam Unit. When the petitioners have agreed with the settlement under section 12(3) of Industrial Disputes Act and signed it, the petitioners cannot say that they have been punished with *mala fide* intention by the respondent. Apart from the above, the respondent have produced the list of employees, who were transferred from Pondicherry unit to other unit and the other unit to Pondicherry and the same were marked as Ex.R22, Ex.R23 and Ex.R26, which would prove that the transfer of employees from one unit to another unit is a routine procedure and there is no *mala fide* intention on the petitioners by the respondent in transferring them to Valasaravakkam Unit. Though the petitioners have stated that since they took an active role in forming a new union, they have been transferred to Valasaravakkam Unit, no evidence has been produced on their side to prove the same. Ex.P1 and Ex.P2 are only the application for Registration of the trade union and receipt for payment of fees for forming the said union and these documents are not sufficient to prove the said version. Hence, this court comes to the conclusion that the transfer of the petitioners to Valasaravakkam Unit by the respondent management is justified.

9. Further contention of the petitioners is that since the transfer order was out of reason and basis except to victimise them, they had taken steps against its enforce before the Labour Officer (Conciliation) and then they were terminated from service without taking any disciplinary action against them.

10. On the side of the respondent, it is contended that the petitioners have refused to go on transfer to Valasaravakkam Unit and in spite of repeated opportunities given to report for duty at Valasaravakkam Unit, they have failed to report for duty and even after sending the show cause notice to the petitioners, they refused to obey the order of transfer. In order to prove the same, the respondent has marked Ex.R3, copy of the letter sent to Babu, dated 7-12-2005 informing him to report for duty at Valasaravakkam Unit, Ex.R4 show cause notice, dated 14-12-2005 issued to Babu directing him to give explanation for non-report of duty, Ex.R5 is the copy of the letter sent to the said Babu, dated 23-12-2005 directing him to report for duty on or before 31-12-2005, Ex.R6 is the another letter sent to the said Babu, directing him to report for duty on or before 16-1-2006, Ex.R7 is the letter, dated 28-1-2006 giving final opportunity to the said Babu to report for duty at Valsaravakkam Unit on or before 6-2-2006. Ex.R8 is the copy of the letter sent to Radja, dated 5-12-2005 informing him to report for duty at Valasaravakkam Unit, Ex.R9 is the returned postal cover, Ex.R10 is the copy of the letter sent to the said Radja, dated 5-12-2005 directing him to report for duty, Ex.R11 is the show cause notice, dated 14-12-2005 issued to the said Radja directing him to give explanation for non-report of duty, Ex.R12 is the cppy of the letter sent to the said Radja dated 23-12-2005 directing him to report for duty on or before 31-12-2005, Ex.R13 is the another letter sent to the said Radja, directing him to report for duty on or before 16-1-2006, Ex.R14 is the letter, dated 28-1-2006 giving final opportunity to the said Radja, to report for duty at Valsaravakkam Unit on or before 6-2-2006. Ex.R15 is the copy of the letter sent to Tamizharasan dated 3-12-2005 informing him to report for duty at Valasaravakkam Unit, Ex.R16 is the returned postal cover, Ex.R17 is the copy of the letter sent to the said Tamizharasan dated 7-12-2005 directing him to report for duty, Ex.R18 is the show cause notice, dated 14-12-2005 issued to the said Tamizharasan directing him to give explanation for non-report of duty, Ex.R19 is the copy of the letter sent to the said Radja dated 23-12-2005 directing him to report for duty on or before 31-12-2005, Ex.R20 is the another letter sent to the said Tamizharasan, directing him to report for duty on or before 16-1-2006, Ex.R21 is the letter, dated 28-1-2006 giving final opportunity to the said Tamizharasan to report for duty at Valasaravakkam Unit on or before 6-2-2006.

11. A perusal of above said documents reveals that the petitioners were given many opportunities to report for duty at Valasaravakkam Unit and in spite of that, they have not reported for duty as per the transfer orders issued to them. But when the petitioners have not obeyed the order of transfer issued by the respondent company, it is for them to issue show cause notice to the petitioners and obtain the explanation from them and if not satisfied with the explanation submitted by them, the respondent has to conduct the

domestic enquiry and sufficient opportunities have to be given in the said enquiry and based on the enquiry report, the respondent management has to take action against them. But in this case, the show cause notices under Ex.R4, Ex.R11 and Ex.R18 have been issued to the petitioners and then the petitioners were terminated from service without following the other procedures as stated above, which is against the principle of natural justice. When the petitioners were the permanent employees and they were working in the respondent company for more than ten years, it is for the respondent to give sufficient opportunities to them and after following the routine procedures as per the labour proceedings, the respondent company should have taken action against them. In this case, as stated above, no domestic enquiry was conducted and the respondent management has not followed the principle of natural justice in terminating the petitioners from service. Hence, the non-employment of the petitioners is not justified and consequently, they are entitled for reinstatement.

11. The contention of the respondent is that out of these three petitioners, one Babu is doing some gainful business and it reliably understood that another petitioner D. Tamizharasan left abroad for some gainful employment and returned back and the third workmen R. Radja is not in India and is stated that he is in gainful employment in foreign country and once the petitioners were in gainful employment, they ceases the employee and employer relationship with the respondent company and they do not have any legal right to continue the dispute with the respondent.

12. But in support of the said contention, no documentary evidence was produced on the side of the respondent. Without producing any proof, the said contention cannot be taken into consideration. At the same time, except the first petitioner, the other two petitioners have not appeared before this court and challenged the said defence taken by the respondent. Even the first petitioner, who appeared before this court, has also not given any evidence to prove that he was unemployed after termination from the service by the respondent. Since no evidence has been given on either side, much important cannot be given to the said contention.

13. It is well settled law that right to life enshrined under Article 21 of Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/ workman fair play requires that a reasonable opportunity to put forth his case is given and the domestic enquiry conducted complying with the principles of natural justice. In *D.T.C. Versus D.T.C. Mazdoor Congress (supra)* the Constitution Bench, per majority held that

termination of the service of a workman giving one month's notice or pay *in lieu* thereof without enquiry offended Art. 14. Neither no such opportunity was given to the petitioner workman, nor principles of natural justice have been complied with. Therefore, the termination of service of the petitioners was bad. Considering the facts and circumstances of the case, this court has come to the conclusion that the petitioners are entitled for reinstatement, but at the same time, they are not entitled for continuity of service, back wages and other attendant benefits. The petitioners are hereby directed to report for duty at Valasaravakkaam Unit, Chennai as per the transfer orders issued by the respondent company. The respondent management is hereby directed to give top priority to transfer the petitioners to the Pondicherry unit as and when the vacancies arise. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the respondent is hereby directed to reinstate the petitioners namely (1) D. Tamizharasan, (2) Radja and (3) Babu into service. However, they are not entitled for continuity of service, back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 28th day of April 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

P.W.1 - 19-1-2011 - D. Tamizharasan

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

- Ex.P1 — Copy of the application for registration of trade union by the petitioner.
- Ex.P2 — Copy of receipt for payment of fees dated 28-11-2005.
- Ex.P3 — Copy of shift schedule of quality department of respondent company.
- Ex.P4 — Copy of transfer order of Tamizharasan dated 3-12-2005.
- Ex.P5 — Copy of transfer order of Babu dated 3-12-2005.
- Ex.P6 — Copy of transfer order of Radja dated 3-12-2005.
- Ex.P7 — Copy of petitioner's complaint before Station House Officer, D. Nagar Police Station dated 14-12-2005.

Ex.P8 — Copy of petitioner's complaint before S.P. Pondicherry.

Ex.P9 — Copy of complaint of MBDL Labourers before Labour Commissioner, dated 8-3-2006.

Ex.PI0 — Copy of conciliation failure report from Labour Officer (Conciliation).

Ex.P11 — Notification order by Joint Secretary, dated 20-3-2006.

Ex.P12 — Copy of called for letter by Labour Officer Conciliation, dated 23-3-2006.

Ex.P13 — Copy of judgment in I.D. No.38/2007, dated 22-3-2010.

Ex.P14 — Copy of 12(3) Settlement, dated 6-11-2004.

Ex.P15 — Copy of 12(3) Settlement, dated 22-7-2000.

Ex.P16 — Copy of Standing Order of respondent company, dated 8-5-2002.

Ex.P17 — Copy of out pass issued by the respondent company.

List of exhibits marked for the respondent:

Ex.R1 — Transfer order issued to Babu dated 3-12-2005.

Ex.R2 — Returned postal cover

Ex.R3 — Copy of letter dated 7-12-2005 sent to Babu by the respondent.

Ex.R4 — Copy of show cause notice dated 14-12-2005 sent to Babu.

Ex.R5 — Copy of letter sent to Babu by the respondent, dated 23-12-2005.

Ex.R6 — Copy of letter sent to Babu by the respondent, dated 4-1-2006.

Ex.R7 — Copy of letter sent to Babu by the respondent, dated 28-1-2006.

Ex.R8 — Copy of Transfer order issued to Radja dated 3-12-2005.

Ex.R9 — Returned postal cover

Ex.RI0 — Copy of letter sent to Radja by the respondent, dated 7-12-2005.

Ex.R11 — Copy of show cause notice dated 14-12-2005 sent to Radja.

Ex.R12 — Copy of letter sent to Radja by the respondent, dated 23-12-2005.

Ex.R13 — Copy of letter sent to Radja by the respondent, dated 4-1-2006.

Ex.R14 — Copy of letter sent to Radja by the respondent, dated 28-1-2006.

Ex.R15 — Copy of transfer order sent to Tamizharasan dated 3-12-2005.

Ex.R16 — Returned postal cover

Ex.R17 — Copy of letter sent to Tamizharasan by the respondent, dated 7-12-2005.

Ex.R18 — Copy of Show Cause Notice dated 14-12-2005 sent to Tamizharasan.

Ex.R19 — Copy of letter sent to Tamizharasan by the respondent, dated 23-12-2005.

Ex.R20 — Copy of letter sent to Tamizharasan by the respondent, dated 4-1-2006.

Ex.R21 — Copy of letter sent to Tamizharasan by the respondent, dated 28-1-2006.

Ex.R22 — List of transferred employees from Pondicherry unit to other unit.

Ex.R23 — List of transferred employees from other unit to Pondicherry unit.

Ex.R24 — Copy of 12(3) settlement

Ex.R25 — Copy of 12(3) settlement, dated 6-11-2004

Ex.R26 — List of transferred employees after 12(3) settlement in 2004.

T. MOHANDASS
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(GO. Rt. No. 159/AIL/Lab./J/2011, dated 23rd August 2011)

NOTIFICATION

Whereas, the Award in I.D.No.25/2006, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. The Pondicherry Co-operative Milk Producers' Union Limited, Puducherry and Tmt. R. Jayarani over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Monday, the 31st day of January 2011

I.D. No. 25/2006

R. Jayarani,
W/o. Ramalingam .. Petitioner

Versus

The Managing Director,
Pondicherry Co-operative Milk Products
Union Limited, Pondicherry. .. Respondent

This industrial dispute coming on 28-1-2011 for final hearing before me in the presence of Mrs. Vrintha Mohan, advocate for the petitioner and Thiruvalargal L. Swaminathan and I. Ilankumar, advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.146/2006/Lab./AIL/J, dated 27-9-2006 for adjudicating the following:

- (1) Whether the non-employment of Tmt. R. Jayarani by the management of M/s. The Pondicherry Co-operative Milk Producers' Union Limited, Pondicherry is justified or not?
- (2) If not, what relief she is entitled to?
- (3) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in her claim statement, has averred as follows:

The petitioner was a permanent employee in the capacity of Lady Instructor with the respondent on contract basis for a period of one year at a payment of ₹ 1,000 per month. On successful completion of the training at the National Dairy Development Board, Anand on 21-12-1990, the petitioner was sanctioned a monthly project allowance of ₹ 300 with effect from 1-4-1991. Then from 20-7-1992 to 24-7-1992 she had successfully completed the training for reorientation programme for CD Core Staff at National Dairy Development Board, Anand.

While so, on 1-12-1993 the respondent without adhering to the principles of natural justice or without abiding by any rules or regulations governing it, by a memorandum terminated the services of the petitioner from 1-12-1993 itself.

Hence, the petitioner approached the Labour Officer raising an industrial dispute and on the direction of Labour Officer, the petitioner was appointed in the post of Lady Instructor and she was placed on probation for a period of one year and after successful completion of the probation period, she as Lady Instructor was regularised with effect from the forenoon of 27-4-1996 *vide* office order, dated 9-5-1996 and she was also sanctioned an annual increment at ₹ 20 with effect from 1-4-1996. The respondent management had a constant grouse against the petitioner that the petitioner was only a sixth standard qualification and was constantly giving her pinpricks in the expectation that she herself would leave the job and go.

Under the above circumstances, the petitioner was transferred and posted to the work in the marketing unit as a Cashier on 26-12-2003 and she was discharging the duties of the Cashier involving cash transaction of several thousands to the best of her ability. While she was then transferred to Administrative Office under the pressures of Managing Director J. Purushothaman. When she insisted on a proper order regarding her transfer and posting to the job of a Dairy Helper, the respondent refused to issue a specific order as to her posting instead she was given an office order on 5-8-2004 wherein she was directed to attend the work as assigned by the Assistant Manager (Administration) then and there. When she came to work in Administrative Officer, she was asked to do the job of Dairy Helper in the place of one M. Sivagamy and she was forced to do all menial jobs like sweeping and cleaning the floor, preparing tea and other beverages for the staff working therein and visitors and other menial works not befitting the post of Lady Instructor for which the petitioner was training appointed by the respondent. These harassments by the Administrative Officer under instructions from the Managing Director have fallen heavily on the mental and physical health of the petitioner and she becoming sick was forced to apply leave and since her health condition did not return normally, she was forced to extend the leave from time to time.

When she has no other options and all her pleas with the respondent fell in its deaf ears, she instituted a suit in O. S. No.675/2004 against the respondent before the II Additional District Munsif, Pondicherry on 10-9-2004 restraining them from enforcing the said order and mandatory injunction. While so, the respondent came out of the blue with a charge that the Assistant Manager instructed the petitioner to take out the old files and list them and arrange them yearwise and this was not performed by the petitioner. The *mala fide*

charge sheet with an inbuilt prior decision and the so called subsequent proceedings were neatly stage managed by the management and under the garb of a domestic enquiry, she was found fault with and ultimately terminated from service by an order, dated 18-6-2005. The termination order issued by the respondent is not in accordance with the rules and regulations governing the petitioner and the respondent. Hence, the present industrial dispute is filed for reinstatement with back wages and other benefits.

3. In the counter statement, the respondent has stated as follows:-

The post of Lady Instructor has already been wound up and there exists no post of Lady Instructor in the Administration of the respondent union at any point of time as per the subsidiary regulations governing the Employees of Pondicherry Co-operative Milk Producers' Union Limited. The educational qualification of the petitioner is only sixth standard and without any technical qualification and experience, the petitioner was given a contractual appointment for certain personal reasons by the then Managing Director under the Co-operative Development Programme to work as Lady Instructor for a period of one year with effect from 19-11-1990. Thereafter the contractual appointment was renewed by an agreement executed by the petitioner, dated 15-11-1991 for a further period of one year from 19-11-1991 to 18-11-1992 and was allowed to continue to work as per the terms and conditions set out in the agreement for further periods until the existence of Co-operative Development Programme. The said Co-operative Development Programme was formulated only based on the Board resolution and there exist no post of Lady Instructor in the subsidiary regulations governing the Employees of Pondicherry Co-operative Milk Producers' Union Limited. When the Co-operative Development Programme was wound up, the contractual services of the petitioner to work as Lady Instructor was terminated by proceedings, dated 1-11-1993 as per the rules and regulations.

While so the petitioner had approached the Labour Officer as against her termination of services and on the undertaking given by the then Managing Director (In-charge) before the Labour Officer, the petitioner was re-employed as Lady Instructor on regular basis knowing fully well that there exist no post of Lady Instructor *vide* appointment order, dated 24-7-1995. *In lieu* of the fact of winding up of the Co-operative Development Programme long back, the petitioner was posted as Cashier in the marketing union without reduction of scale of pay through order,

dated 26-12-2003. But the petitioner was not discharging her duties to the satisfaction of the administration in spite of her alternative post and upon his directives, the then Administrative Officer of the union issued an office order, dated 5-8-2004 directing her to report and work under the control of Assistant Manager (Admn.) with immediate effect. Contrary to the directives issued to her, the petitioner reported for duty only on 13-8-2004 and again proceeded on medical leave from 17-8-2004 to 13-9-2004. After reporting for duty, the petitioner was instructed on 14-9-2004 to take a list of old files of the union and arrange them yearwise. Instead of adhering to the instructions, the petitioner was sitting idle and chit chatting with other employees thereby creating nuisance to the office atmosphere. Hence, the petitioner was suspended, and detailed enquiry for commission of misconduct was conducted by the respondent administration in strict adherence to the principles of natural justice and upon the charges being proved in the enquiry, the petitioner was dismissed from service. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, the petitioner was examined as PW.1 and Ex.P1 to Ex.P36 were marked. On the side of the respondent, no oral evidence was adduced and Ex.R1 to Ex.R7 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point :

The contention of the petitioner is that she was posted as Lady Instructor in the respondent and she was arbitrarily, illegally and fancifully dismissed in contravention to the principles of natural justice *vide* order of dismissal, dated 18-6-2005 by the respondent management. In order to prove her claim, the petitioner was examined as PW.1 and through her, Ex.P1 to Ex.P36 were marked.

7. *Per contra*, the contention of the respondent is that though the petitioner was appointed as Lady Instructor, which was created for Co-operative Development Programme, since the said Co-operative Development Programme was wound up, the petitioner was posted as Cashier, but she was not discharged her duties and hence she was transferred Administrative Officer and she was sitting idle and chit chatting with other employees and hence she was terminated from service after holding domestic enquiry. On the side of the respondent, Ex.R1 to Ex.R7 were marked.

8. It is true that the petitioner was appointed as a Women Instructor in the respondent company on 9-11-1990 as per Ex.P1 appointment order issued to her by the respondent. It is also true that the petitioner

underwent training programme from 19-11-1990 to 21-12-1990 as could be seen from Ex.P2. Ex.P3 is the appointment order issued by the respondent, placing the petitioner in the post of Lady Instructor with effect from 19-11-1990 on a consolidated pay of ₹ 1,000 per month. Ex.P4 is the proceedings issued by the respondent to the petitioner, sanctioning monthly project allowance of ₹ 300 to her. Ex.P5 is the order issued by National Dairy Development Board sponsoring the name of the petitioner in the training programme from 20-7-1992 to 24-7-1992. Ex.P6 is the copy of the memorandum issued to the petitioner, dismissing her from service with effect from 1-12-1993. Ex.P7 is the copy of the undertaking given by the respondent to the Conciliation Officer to reemploy the petitioner in the post of Lady Instructor. Based on Ex.P7, the respondent management issued an order Ex.P8 appointing the petitioner as Lady Instructor on regular basis. Ex.P9 is the copy of the office order issued to the petitioner, sanctioning the annual increment to her. Ex.P10 is the copy of the proceedings issued to the petitioner, sanctioning the project allowance of ₹ 350 per month to her. Ex.P11 is the copy of the Office Order regularising the petitioner in the post of Lady Instructor with effect from 27-4-1996. Ex.P12 is the copy of the seniority list issued to the petitioner along with the other employees of the respondent management.

9. All the above facts are admitted by the respondent in the counter and the above documents Ex.P1 to Ex.P12 are not denied by them. But the main contention of the respondent is that the petitioner was given a contractual appointment for certain personal reasons by the then Managing Director under the Co-operative Development Programme to work as Lady Instructor and the post of Lady Instructor has already been wound up and there exists no post of Lady Instructor in the administration of the respondent union at any point of time as per the subsidiary regulations governing the Employees of Pondicherry Co-operative Milk Producers Union Limited and when the Co-operative Development Programme was wound up, the contractual services of the petitioner to work as Lady Instructor was terminated and on the intervention of the Conciliation Officer, the petitioner was issued an improper and unwarranted appointment order, dated 24-7-1995 for an ineligible incumbent by directing her to report for duty. He further submitted that since the petitioner has not been appointed as against the sanctioned vacancy, the question of reinstatement would never survive for consideration and relied upon the following decisions:-

2007(5) CTC 13 :

"If the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility".

1999 (III) CTC 325 :

"Work of Intermittent Character - No sanctioned vacancy and no budgetary sanction for post - Daily wager not entitled for regularisation in the absence of vacancy - Court cannot issue direction for regularisation in the absence of any sanctioned vacancy."

2002(4) CTC 385 :

"In view of the authoritative pronouncement of the Supreme Court, which is the law of the land under Article 141 of Indian Constitution, and as the facts of this batch of cases clearly attract the legal principles enunciated by the Supreme Court, we hold that the appointments of the staff made to the co-operative societies by the elected bodies or the officers in-charge, in violation of the cadre strength or the prescriptions of the educational qualifications, cannot stand and are held to be null and void."

10. To prove his contention, the respondent has marked Ex.R1, particulars of list of posts in the respondent society. A perusal of Ex.R1 reveals that there are 30 posts existing in the respondent society, in which the post of Lady Instructor has not been mentioned. It is also mentioned in Ex.R1 that some other posts will be created from time to time with the approval of the Registrar.

11. The learned counsel for the respondent would submit that the petitioner being a sixth standard without any technical qualification and experience, who cannot be suited to work in any of the post as enshrined in the subsidiary regulations governing the employees of Pondicherry Co-operative Milk Producers' Union Limited was appointed as Lady Instructor by the then officiating Managing Director by name B. Navaneethakannan for obvious reasons, who had acted contrary to the subsidiary regulations as there exist no post of Lady Instructor in PONLAIT by giving consent before the Labour Officer (Conciliation) when the petitioner raised a similar dispute regarding her termination of contractual service of Lady Instructor under Co-operative Development Programme and the said B. Navaneethakannan was issued with a charge memorandum on 18-5-2004. In order to prove his claim, the respondent has marked Ex.R2, copy of the application for conciliation submitted by the petitioner before the Conciliation Officer for reinstatement in the post of Lady Instructor. Ex.R3 is the counter statement filed by the respondent management for Ex.R2. Ex.R4 is the memorandum and charges framed against the said Navaneethakannan for the misconduct committed by him. A perusal of Ex.R4 reveals that nine charges have been framed against the said B. Navaneethakannan and ninth charge is relating to this case, which runs as follows:—

"That Thiru B. Navaneethakannan contrary to the subsidiary regulations had agreed before the Labour Officer (Conciliation) to reemploy Tmt. R. Jayarani as Lady Instructor on regular basis knowing fully well that the incumbent is not eligible for the post. Accepting before the Labour Officer (Conciliation) and issuance of appointment order, dated 27-4-1995 to Tmt. R. Jayarani as Lady Instructor in the scale of pay of ₹ 875 - 2,100 subject to service regulations is contrary to service jurisprudence consequent upon which the Union is incurring recurrent loss to which Thiru B. Navaneethakannan alone is responsible."

12. From the documents Ex.R1 to Ex.R4, it is seen that there exists no post of Lady Instructor in the respondent union and the said post will be created from time to time with the approval of the Registrar, when the Co-operative Development Programme is formulated. The records would further show that the petitioner was appointed in the post of Lady Instructor for the period of one year from 19-11-1990 and then for one year from 19-11-1991 and when the Co-operative Development Programme was wound up, the contractual services of the petitioner to work as Lady Instructor was terminated. The records would further show that when the petitioner approached before the Conciliation Officer for her reinstatement, the then Managing Director B. Navaneethakannan contrary to the rules of the respondent management, has given an undertaking before the Labour Officer to reemploy the petitioner as Lady Instructor on regular basis and issued an improper appointment order to her. The records would further show that the disciplinary action has also been initiated against the said B. Navaneethakannan for misconduct committed by him.

12. When the initial entry of the employee is unauthorised and is not against any sanctioned vacancy, the question of regularisation is not raised, as held by the Hon'ble High Court in the above citations. In the case on hand, the then Managing Director B. Navaneethakannan contrary to the rules of respondent management has issued an improper appointment order, appointing the petitioner as Lady Instructor on regular basis, though there is no sanctioned post of Lady Instructor in the respondent society. Hence, the appointment order regularising the petitioner in the post of Lady Instructor is illegal.

13. Further contention of the learned counsel for the petitioner is that though she was appointed as Lady Instructor, subsequently she was placed in the post of Cashier and then she was transferred to Marketing Unit and in all the above places, she was doing her work to the utmost satisfaction of the respondent management, but the respondent management raised false allegation against her, suspended her and the domestic enquiry was conducted

by them, which is not fair and proper and sufficient opportunity has not been given to the petitioner to defend her case.

14. The learned counsel for the respondent would submit that the enquiry has been conducted in strict adherence to the principles of natural justice and as the charges have been proved, she was terminated from service.

15. On perusal of records, it is seen that the Assistant Manager (Administration) issued a memorandum, dated 7-10-2004 to the petitioner to show cause in writing as to why disciplinary proceedings for dismissal from service should not be initiated for continuous dereliction of duty, for which the petitioner has submitted an explanation and as the explanation was not found to be satisfactory, the respondent issued an order of suspension under Ex.P22. The records would further show that the petitioner was served with a charge sheet, dated 7-2-2005 Ex.P24 and the petitioner submitted her reply to the said charge sheet under Ex.P25 and then enquiry proceedings were initiated against her. On the side of the respondent, the enquiry report was marked as Ex.P26. A perusal of Ex.P26 would reveal that the enquiry was conducted on 21-2-2005 and since the petitioner was not participated in the enquiry, the enquiry was posted to 24-2-2005 and all the records were sent to the petitioner through post. On 24-2-2005 also the petitioner was not participated in the enquiry and it was posted to 14-3-2005 and on that day, she was participated in the enquiry and on the side of the respondent, two witnesses were examined and they were cross-examined by the petitioner and since the petitioner stated that there is no witnesses on her side and requested to close the enquiry. The second show cause notice under Ex.P27 was also sent to the petitioner. Based on the evidence available on records, the Enquiry Officer submitted his report stating that the charges framed against the petitioner are proved. From the above, it is clear that the petitioner was given sufficient opportunity to defend her case and the respondent management has conducted the enquiry in a proper manner and there is no violation of principles of natural justice in conducting the enquiry. Through Ex.P31 dismissal order was passed by the respondent management.

16. The learned counsel for the respondent would argue that the petitioner had filed a civil suit before the II Additional District Munsif, Pondicherry in O.S. No. 675/2004 praying the following reliefs:

(a) declaration that the office order, dated 5-8-2004 issued by the defendant organisation to the plaintiff as void and non-est in the eyes of law.

(b) direct the defendants No.1 and 2 or the Subordinate Officers of the organisation by way of mandatory injunction to assign the plaintiff the duties

and responsibilities of a Lady Instructor only in view of the order, dated 3-5-2003 issued by the defendant No. 2.

(c) direct the defendants 1 and 2 by way of mandatory injunction to maintain the plaintiff in the post of Lady Instructor without affecting or prejudicing her regular and lawful promotion.

The learned counsel for the respondent further submitted that after hearing both sides arguments, the learned II Additional District Munsif, Pondicherry dismissed the said suit by stating that there exist no post of Lady Instructor and hence the present claim petition has to be dismissed on the ground of constructive *res judicata* which bars a similar relief to be claimed on a decided issue in a different forum.

17. On the side of the respondent, the written statement filed in O.S. No. 675/2004 has been marked as Ex.R6. The copy of the said judgment has been marked as Ex.P36 on the side of the petitioner. Ex.P36 would confirm the said facts. In the present industrial dispute the petitioner has claimed to set aside the dismissal order passed by the respondent management and for her reinstatement in service. When the same relief has already been decided in O.S. No.675/2004 by dismissing her claim, filing of the present industrial dispute claiming the similar relief would definitely hit by *res judicata*. Hence, I accept the contention of the respondent that the present industrial dispute is hit by *res judicata*, as the similar issue has already been decided in O.S. No. 675/2004.

18. Apart from the above finding of the Enquiry Officer, we have to see whether the petitioner was appointed in a sanctioned post or not. In this regard, the principle laid down by the Hon'ble Supreme Court in the following case is very relevant to this case:-

AIR 1994 Supreme Court 1638 :

"Industrial Disputes Act (14 of 1947) S.25B - Regularisation of service - Persons working under Education Board on *ad hoc* assignment - Posts not sanctioned - No right of regularisation exists for such employees - Attributing status of workman under Industrial Disputes Act to persons completing 240 days of work, not proper - Such duration of work does not create right to regularisation - Direction of High Court for regularisation of services of all such employees, set aside.

Regularisation - Right of - Workers on temporary assignment only, working on unsanctioned posts - No right of regularisation exists for such employees.

Casual workmen - Workers working temporarily under State Government - Posts not sanctioned - Completion of 240 days of work by them cannot attribute status of casual workmen to them."

The petitioner was appointed as Lady Instructor. On perusal of records, it is seen that the Managing Director, who appointed the petitioner, has acted beyond the purview of labour legislations. In the above circumstances, the citations referred by the learned counsel for the respondent are squarely applicable to this case. Hence, for the reasons stated above, the respondent has correctly took decision by terminating the petitioner from service and hence she is not entitled to the relief as prayed for. Accordingly, this point is answered.

19. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner :

PW1 — 16-9-2010 — Jayarani

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

Ex.P1 — Copy of the proceedings, dated 9-11-1990

Ex.P2 — Copy of the joining report, dated 21-12-1990.

Ex.P3 — Copy of proceedings, dated 19-3-1991

Ex.P4 — Copy of the proceedings, dated 7-10-1991 issued to the petitioner.

Ex.P5 — Copy of the training order, dated 24-7-1992 issued to the petitioner.

Ex.P6 — Copy of the memorandum, dated 1-12-1993

Ex.P7 — Copy of the settlement order

Ex.P8 — Copy of the proceedings of the Managing Director, dated 27-4-1995.

Ex.P9 — Copy of the office order, dated 28-6-1995 issued to the petitioner.

Ex.P10 — Copy of the proceedings, dated 18-7-1995 issued to the petitioner.

Ex.P11 — Copy of office order regularising the petitioner, dated 9-5-1996.

Ex.P12 — Copy of the circular, dated 3-4-1996

Ex.P13 — Copy of the office order, dated 3-5-2003

Ex.P14 — Copy of the office order, dated 7-11-2003

Ex.P15 — Copy of the office order of the respondent, dated 26-12-2003.

Ex.P16 — Copy of the transfer order, dated 5-8-2004

- Ex.P17 — Copy of memorandum, dated 7-10-2004
- Ex.P18 — Copy of explanation given by the petitioner, dated 8-10-2004.
- Ex.P19 — Copy of the memorandum, dated 11-10-2004
- Ex.P20 — Copy of the memorandum, dated 11-10-2004
- Ex.P21 — Copy of the letter, dated 12-10-2004
- Ex.P22 — Copy of the order, dated 16-10-2004
- Ex.P23 — Copy of the memorandum, dated 7-2-2005
- Ex.P24 — Copy of the charge sheet, dated 7-2-2005 issued to the petitioner.
- Ex.P25 — Copy of the letter, dated 12-2-2004 sent to the respondent.
- Ex.P26 — Copy of the enquiry proceedings, dated 18-2-2005.
- Ex.P27 — Copy of the Enquiry Report
- Ex.P28 — Copy of the letter, dated 25-5-2005 sent by the petitioner.
- Ex.P29 — Copy of memorandum, dated 27-5-2005 issued to the petitioner.
- Ex.P30 — Copy of explanation given by the petitioner, dated 30-5-2005.
- Ex.P31 — Copy of the dismissal order, dated 18-6-2005.
- Ex.P32 — Copy of notice of enquiry, dated 8-11-2005
- Ex.P33 — Copy of failure report, dated 9-6-2006
- Ex.P34 — Copy of the notification, dated 27-9-2006
- Ex.P35 — Copy of notice issued by this court
- Ex.P36 — Copy of the judgment passed in O.S. No. 675/2004.

List of exhibits marked for the respondent :

Ex.R1 — Copy of the list of posts

Ex.R2 — Copy of the application filed before Labour Officer, dated 11-1-1994.

Ex.R3 — Copy of the reply filed by the Labour Officer, dated 11-7-1994.

Ex.R4 — Copy of the memorandum issued to Navaneethakannan, dated 18-5-2004.

Ex.R5 — Copy of the report of Administrative Officer, dated 6-10-2004.

Ex.R6 — Copy of written statement filed in O.S.675/2004

Ex.R7 — Copy of enquiry report, dated 23-4-2005

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.